

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579**

IN THE MATTER OF THE CLAIM OF

THERALD E. CODY
NERINA A. CODY

**Under the International Claims Settlement
Act of 1949, as amended**

Claim No. CU -1304

Decision No. CU 4806

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by THERALD E. CODY and NERINA A. CODY for \$66,207.00 based upon the asserted ownership and loss of interests in real and personal property in Cuba. Claimants have been nationals of the United States since birth, and naturalization in 1944, respectively.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimants describe their losses as follows:

1) A one-half interest in the properties of Fincas Rusticas Rancho, S.A.	\$41,400.00
2) A one-half interest in a 20-acre poultry farm	20,310.50
3) A one-half interest in personalty pertinent to the above	3,296.50
4) Other personalty	<u>1,200.00</u>
	\$66,207.00

Based upon the record, including a report from abroad and clarification of claimant, THERALD E. CODY, the Commission finds that claimants owned a one-half interest in certain real property held through an operating company known as "Fincas Rusticas Rancho, S.A.", and also owned other realty and personalty in one-half part; as well as personalty other than that in partnership.

In about 1955 claimants and two Cuban nationals purchased about 50 acres of land at Kilometer 6, Doble Via, Ceiba de Agua, Havana. About 30 acres formed into 38 lots of 3/4 acre each, were placed in the jointly-owned company, and some lots were subsequently sold. The remaining 20 acres were used by the partners as a poultry farm, with appurtenant facilities and personalty.

Claimants state that payments on the lots practically ceased on Castro's takeover on January 1, 1959 with many leaving the country and bank accounts frozen. Claimants left Cuba in September, 1959. The remaining partner moved to the farm, but in January, 1960 he was obliged by the National Institute for Agrarian Reform to deliver all produce to the Government, for which only receipts were given. Thereafter, in June 1962, the farm was formally intervened.

The Commission finds that the properties held by Fincas Rusticas Rancho, S.A.; the poultry farm and its equipment; and claimants' individually owned personalty, were effectively taken by the Government of Cuba on January 15, 1960.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The record includes maps of the subdivision, of the poultry farm, evidence of the conduct of a poultry enterprise, list of personalty, a statement of a purchaser of lots for \$2,400.00 each, the detailed report from abroad, and a photograph.

The Commission finds that the 50 acres placed in the subdivision had an original value of \$100,800.00. Lots sold therefrom and paid for had a value of \$18,000.00. The remaining value of \$82,800.00 comprised \$27,800.00 for lots not sold, and \$55,000.00 for lots sold but not paid for. It appears, however, that the property was encumbered by a mortgage of \$5,000.00, which must be deducted to arrive at the equity of \$77,800.00. Accordingly, the claimants jointly suffered a loss of \$38,900.00 in this connection.

The Commission finds the value of the poultry farm as follows:

20 acres	\$20,000.00
Fruit trees	2,000.00
Driveway	1,700.00
Buildings, power lines, wells, etc.	16,921.00
Building supplies	1,947.00
Livestock	3,860.00
Tools	<u>786.00</u>
	\$47,214.00

Claimants jointly suffered a loss of \$23,607.00 in connection with the poultry farm.

Additionally claimants owned certain personalty for their own use including furniture, furnishings, household equipment and the like which the Commission finds had a value of \$1,200.00 on January 15, 1960.

Accordingly, the Commission concludes that claimants jointly suffered a loss in the amount of \$63,707.00 within the meaning of Title V of the Act, as the result of the taking of their property by the Government of Cuba on January 15, 1960.


The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.


CERTIFICATION OF LOSS

The Commission certifies that THERALD E. CODY and NERINA A. CODY jointly suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Sixty-three Thousand Seven Hundred Seven Dollars (\$63,707.00) with interest at 6% per annum from January 15, 1960 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

APR 29 1970


Lytle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)